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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ENERGY INTELLIGENCE GROUP, INC., Plaintiff, v. SUMITOMO CORPORATION OF AMERICAS, Defendant.	Civil Action No. 16-cv-00857 (NRB) ~~PROPOSED~~ SCHEDULING ORDER

NAOMI REICE BUCHWALD, U.S.D.J.:

WHEREAS, the Court issued an Order for a Conference in accordance with Fed. R. Civ. P. 16(b) (the "Order"); and

WHEREAS, the Order requires that the parties jointly prepare and sign a proposed Scheduling Order containing certain information;

WHEREAS, the Court held a telephonic hearing with the parties on June 29, 2016 and ordered the parties to submit a proposed scheduling order;

NOW, THEREFORE, the parties hereby submit the following information as required by the Order and the Court:

(1) the date of the conference and the appearances for the parties:

The 16(b) conference was held on May 17, 2016.

Appearances for the parties will be as follows:

For Plaintiff
Energy Intelligence Group, Inc.:

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For Defendant
Sumitomo Corporation of Americas

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(2) the date upon which automatic disclosures were exchanged:

May 13, 2016

(3) a concise statement of the issues as they then appear:

Plaintiff alleges that Defendant has infringed its copyrights in and to Plaintiff's publication *Natural Gas Week*, ("NGW"), for the period covering August 2004 through March 2015. Specifically, Plaintiff alleges that Defendant electronically copied and distributed the copyrighted NGW publications it received pursuant to Defendant's single-copy subscription, without authorization.

Plaintiff further alleges contributory infringement based upon Defendant's copying and distributing the NGW publications to third parties.

Defendant denies that it has ever had a "single-copy" subscription to NGW, but admits that it has had a "single authorized user license to NGW since July 2014." Defendant admits that one of its employees "forwarded a limited number of NGW publications," but raises several affirmative defenses, including, but not limited to, that Defendants' activities constitute fair use, that Plaintiff granted Defendant an implied license, that any alleged copying was deminimis or was of portions that were not protectable by copyright, and that Plaintiff acquiesced to Defendant's actions.

(4) a schedule including:

(a) the names of persons to be deposed and a schedule of planned depositions:

The parties have not yet identified all persons to be deposed, nor the schedule for any such depositions.

Notwithstanding the foregoing, Plaintiff anticipates that it will depose, at a minimum, current and/or former employees of Defendant who received, copied and/or distributed the NGW publications including, but not necessarily limited to, Cynthia Baker and Yasuko Williams, Joseph Clardy, Toshikazu Nambu (General Manager for the Americas, President and CEO of Sumitomo Corporation of Americas), Shigeaki Maejima (Director, Sumitomo Australia Pty. Ltd.), Shunichi Arai (Representative Director, Assistant to President and CEO, Sumitomo Corporation); and Michael Lepine (Manager – Business Development, Sumitomo Corporation of Americas). In addition to the foregoing, Plaintiff anticipates that it will also seek to depose a corporate representative of Defendant and/or other individuals with knowledge of Defendants subscription to and use of Plaintiff's NGW publications, as well as other similar publications received by Defendant.

Notwithstanding the foregoing, Defendant anticipates that it will depose, at a minimum, current and/or former employees of Plaintiff who discussed Defendant's NGW license with Defendant's employees, including, but not necessarily limited to, Derrick

Dent. In addition to the foregoing, Defendant anticipates that it will also seek to depose Tom Wallin and Mark Wellman. In addition to the foregoing, Defendant anticipates that it will also seek to depose a corporate representative of Plaintiff and/or other individuals with knowledge of Plaintiff's subscription service.

The parties anticipate that all fact depositions will be completed on or before: December 20, 2016.

(b) a schedule for the production of documents:

Document production shall be completed on or before November 23, 2016

(c) expert discovery schedule:

(i) Designation of all expert witnesses shall be concluded on or before

January 13, 2017.

(ii) Rebuttal of all expert reports shall be concluded on or before February 10, 2017.

(iii) All expert's deposition will be completed on or before March 10, 2017.

(d) time when discovery is to be completed:

All discovery shall be completed on or before March 10, 2017.

(e) the date by which plaintiff will supply its pre-trial order matters to defendant:

March 24, 2017

(f) the date by which the parties will submit a pre-trial order in a form conforming with the Court's instructions together with trial briefs and either (1) proposed findings of fact and conclusions of law for a non-jury trial, or (2) proposed voir dire questions and proposed jury instructions, for a jury trial; and

April 28, 2017

(g) The final pre-trial conference pursuant to Fed. R. Civ. P. 16(d) shall occur on: NRB

[to be filled in by the Court at the conference.]

(e) The parties shall report to the Court every sixty (60) days on the progress of discovery. NRB

(5) a statement of any limitations to be placed on discovery, including any protective or confidentiality orders:

The Parties filed a proposed stipulated protective order, which was entered by the Court on May 17, 2016. The Parties do not foresee any further limitations to be placed on discovery at this time.

(6) a statement of those discovery issues, if any, on which counsel, after a good faith effort, were unable to reach an agreement

Currently, the Parties do not have any discovery issues upon which counsel are unable to reach an agreement. However, during settlement discussions, Plaintiff produced a sampling of settlement documents relating to other matters to Defendant solely in aid of settlement discussions. Defendant has indicated that it will seek production of all settlement agreements entered into by Plaintiff and third parties in prior copyright enforcement matters through discovery. Plaintiff does not believe that these agreements are relevant to this matter and are therefore not properly subject to formal production. Further, these agreements are subject to confidentiality provisions by their own terms and/or duly entered protective orders in their respective matters.

As such, should Defendant proceed with its stated intention to seek production of these documents, such a request will present an issue upon which the parties have thus far been unable to reach an agreement.

(7) anticipated fields of expert testimony, if any:

Plaintiff may call an expert on damages and/or standards and practices within the publishing industry.

Defendant may call an expert on damages and an expert as a rebuttal witness on the issues raised and testimony offered by Plaintiff's expert(s).

(8) anticipated length of trial and whether to court or jury:

The Parties anticipate that the trial will last 3-5 days. The Parties have both requested a jury trial.

(9) a statement that the Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference or when justice so requires:

This Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference or when justice so requires.

The parties should proceed on the assumption that no extensions will be granted given the length of the schedule. NRB

(10) names, addresses, phone numbers and signatures of counsel:

/s/ Thomas H. Curtin
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ATTORNEYS FOR DEFENDANT

Dated: July 28, 2016

SO ORDERED

Naomi Reice Buchwald
United States District Judge